

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1904.

No. 1384.

WATSON F. CLARK, ADMINISTRATOR OF THE ESTATE
OF EDWARD CLARK, DECEASED, APPELLANT,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

WATSON F. CLARK, Administrator, Appellant, }
vs. } No. 1384.
MUTUAL RESERVE LIFE INSURANCE COMPANY. }

a Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator of the Es- }
tate of Edward Clark, Deceased, Plaintiff, }
vs. } No. 45944. At Law.
MUTUAL RESERVE LIFE INSURANCE COMPANY, }
Defendant. }

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1

Declaration.

Filed January 22, 1903.

In the Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator of the Estate }
of Edward Clark, Deceased, Plaintiff, }
vs. } At Law. No. 45944.
MUTUAL RESERVE LIFE INSURANCE COMPANY, }
Defendant. }

The plaintiff, as administrator of the estate of Edward Clark, deceased, sues the defendant, a corporation organized under the laws of the State of New York, and succeeding to all the rights and liabilities of the Mutual Reserve Fund Life Association, a corporation also organized under the laws of the State of New York.

1. For that on, to wit, the 14th day of March, 1882, in consideration, among other things, of certain mortuary assessments payable and to be paid by the plaintiff's intestate, Edward Clark, within thirty days after notice of each of said assessments to said

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Edward Clark, the defendant's predecessor, the said Mutual Reserve Fund Life Association, hereinafter called the "life association," promised to pay to Eveline F. Clark, wife of said Edward Clark, deceased, within ninety days after receipt of satisfactory evidence to the said life association of the death of the said Edward Clark, if then living; otherwise to the legal representative of said Edward Clark, the sum of ten thousand dollars. And the plaintiff says that said Edward Clark died on, to wit, the 6th day of January, 1902, and that the said Eveline F. Clark was not at that time living, but died on, to wit, the 8th day of December 1896. And the plaintiff further says that on, to wit, the 18th day of February 1902, he was duly appointed by the supreme court of the District of Columbia, holding a probate court, administrator of the estate of the said Edward Clark, deceased, and is the legal representative of said Edward Clark, and that on, to wit, the 3d. day of March, 1902, he sent to the said life association satisfactory evidence of the death of the said Edward Clark, and that after the expiration of ninety days after the receipt of said evidence of the death of said Edward Clark, by the said life association, on, to wit, the 28 day of October, 1902, he, the plaintiff, demanded of and from the said life association the sum of ten thousand dollars. And the plaintiff further says that all the said mortuary assessments agreed by the said Edward Clark to be paid to the said life association and of which he was duly notified as by said agreement provided as aforesaid, were paid by said Edward Clark to the said life association. And the plaintiff further says that the defendant, notwithstanding the said demand made by the plaintiff of and upon the said life association, refused to pay the said sum of ten thousand dollars justly due to the plaintiff as aforesaid or any part thereof, and still refuses so to do, wherefore the plaintiff brings his suit and claims under this count the sum of ten thousand dollars, with interest from the 31st day of October, 1902.

2. The plaintiff further sues the defendant for that the defendant's predecessor, the Mutual Reserve Fund Life Association, hereinafter called "life association," in consideration of the statements, representations and warranties, contained in a certain application for membership in the said life association by the plaintiff's intestate, Edward Clark, deceased, which said application has for a long time, to wit, since the 14th day of March, 1882, until the time of the organization of the defendant corporation been in the possession of the said life association, and now is in the possession of the defendant, and of the admission fee paid and of the dues for expenses to be paid on or before the 10th day of March, in every year during the continuance of the certificate of membership or policy of insurance hereinafter mentioned, and of all the mortuary assessments payable to the said life association within thirty days from the date of the notice of each of said assessments, which said assessments were to be made according to a certain table of rates of assessments endorsed on the back of said certificate, the said life association promised to pay Eveline F. Clark, wife of the said

Edward Clark, deceased, if then living, otherwise to the legal representative of said Edward Clark, deceased, within ninety days after the receipt of satisfactory evidence to the said life association of the death of the said Edward Clark, the sum of ten thousand dollars, said promise being evidenced by a certain certificate of membership or policy of insurance granted and delivered to said Edward Clark, deceased, on, to wit, the 14th day of March, 1882. And the plaintiff says that the said Eveline F. Clark, wife of the said Edward Clark, died on the 8th day of December, 1896, and that thereafter on, to wit, the 6th day of January, 1902, the said Edward Clark died, and that the plaintiff, on, to wit, the 17th day of February, 1902, was by the supreme court of the District of Columbia, holding a probate court, duly appointed administrator of the estate of said Edward Clark, and that he duly qualified as such administrator, and that on, to wit, the 18th day of February, 1902, letters of administration on said estate of said Edward Clark were issued to him. And the plaintiff says that said Edward Clark during his lifetime did and performed all that was required of him to do and perform by and under said certificate of membership or policy of insurance hereinabove mentioned, and paid to the said life association all mortuary assessments agreed upon to be paid according to said table of rates of assessment endorsed on the back of said certificate of membership or policy of insurance within thirty days from the date of each notice of each of said assessments. And the plaintiff says that after the death of the said Edward Clark, and on, to wit, the 3 day of March, 1902, he sent to the said life association satisfactory evidence of the death of the said Edward Clark, and that after the expiration of ninety days after the receipt of said evidence of the death of said Edward Clark by the said life association, he made, on, to wit, the 28th day of October, 1902, demand upon the said life association for the said sum of ten thousand dollars so agreed to be paid by said life association, as aforesaid, but the defendant successor to said life association as aforesaid refused to pay said sum or any part thereof and still refuses so to do, wherefore the plaintiff claims of and from the defendant in this count the sum of ten thousand dollars with interest from the 31st day of October 1902, besides costs of suit.

5 3. The plaintiff further sues the defendant for that by a certain certificate of membership or policy of insurance heretofore made and delivered by the Mutual Reserve Fund Life Association, predecessor to the defendant and hereinafter called the "life association" to one Edward Clark, deceased, plaintiff's intestate on, to wit, the 14th day of March, 1882, in consideration of certain dues for expenses to be paid on or before the 10th day of March in each year during the continuance of said certificate or policy of insurance and of all mortuary assessments payable according to a table of rates of assessment endorsed on said certificate or policy of insurance, within thirty days from the date of each notice of said assessments, the said life association promised to pay within ninety days after the receipt of satisfactory evidence of the

death of the said Edward Clark, deceased, unto Eveline F. Clark, if then living, otherwise to the legal representative of said Edward Clark, the sum of ten thousand dollars. And the plaintiff says that the said Edward Clark died on, to wit, the 6th day of January, 1902, after the death of his said wife, Eveline F. Clark, who departed this life on, to wit, the 8th day of December, 1896, and that on, to wit, the 17th day of February, 1902, the plaintiff was duly appointed administrator of the said estate of the said Edward Clark, deceased, and that on, to wit, the 18th day of February, 1902, after having duly qualified as such administrator, letters of administration on the said estate of said Edward Clark were granted to him, the plaintiff. And the plaintiff says that said Edward Clark during his lifetime paid to the said life association all the mortuary assessments according to the said table of rates of assessment endorsed on the back of said certificate or policy of insurance, as aforesaid, of which he had thirty days' notice as aforesaid, and all dues for expenses, except those which were refused by said life association. And the plaintiff further says that on, to wit, the 3rd. day of March, 1902, he sent to the said life association satisfactory evidence of the death of the said Edward Clark, which said evidence was received by the said life association on to wit, the 4th day of March, 1902 and thereafter the plaintiff, after the expiration of ninety days from the receipt of said evidence by said life association of the death of said Edward Clark, made demand on and upon the said life association for the said sum of ten thousand dollars justly due and payable to him by the same, but the defendant successor to said life association as aforesaid refused to pay to the plaintiff the said sum or any part thereof, and still refuses so to do, wherefore the plaintiff claims under this count of and from the defendant the sum of ten thousand dollars, with interest from the 31st day of October, 1902, besides costs of suit.

4. The plaintiff further sues the defendant for that by a certain certificate of membership or policy of insurance No. 2700 heretofore made and delivered by the Mutual Reserve Fund Life Association, predecessor to the defendant, and hereinafter called the "life association" to Edward Clark, deceased, plaintiff's intestate, on, to wit, the 14th day of March, 1882, in consideration of certain dues to be paid on or before the 10th day of March in each year during the continuance of said certificate or policy of insurance, and of certain mortuary assessments at the rate of \$28.00 each to be made upon said Edward Clark whenever the death fund of the said life association should be insufficient to meet any existing claim by death, each of said assessments being payable within thirty days from the date of notice thereof, the said life association promised to pay within ninety days after the receipt by the said life association of satisfactory evidence of the death of the said Edward Clark, deceased, unto Eveline F. Clark, if then living, otherwise to the legal representative of said Edward Clark deceased, the sum of ten thousand dollars (\$10,000.00).

And the plaintiff says that the said Edward Clark died on, to wit, the 6th day of January, 1902, after the death of his said wife, Eveline F. Clark, who departed this life on, to wit, the 8th day of December, 1896, and that on, to wit, the 17th day of February, 1902, the plaintiff was duly appointed administrator of the said estate of the said Edward Clark, deceased, and that on, to wit, the 18th day of February, 1902, after having duly qualified as such administrator, letters of administration on the said estate of said Edward Clark were granted to him, the plaintiff. And the plaintiff says that the said Edward Clark during his lifetime paid to the said life association, as mortuary assessments, the said sum of \$28.00 within thirty days after the date of each and every notice to pay the same and in all respects fully fulfilled and performed all that was required of him to be fulfilled and performed by said certificate or policy of insurance. And the plaintiff says that on, to wit, the 3d day of March, 1902, he sent to the said life association satisfactory evidence of the death of the said Edward Clark, which said evidence was received by the said life association, on, to wit, the 4th day of March, 1902; and thereafter, the plaintiff, after the expiration of ninety days after the receipt of said evidence by said

life association of the death of said Edward Clark, — demand
8 on and upon the defendant for the said sum of ten thousand dollars (\$10,000.00) justly due and payable to him by the defendant, but the defendant refused to pay the plaintiff the said sum or any part thereof, and still refuses so to do, wherefore the plaintiff claims under this count of and from the defendant the sum of ten thousand dollars (\$10,000.00), with interest from the 31st day of October, 1902, besides costs of suit.

5. The plaintiff further sues the defendant for that by a certain certificate of membership or policy of insurance No. 2700, heretofore made and delivered by the Mutual Reserve Fund Life Association, a corporation duly organized under the laws of the State of New York, hereinafter called the "life association" to whose rights and liabilities the defendant has succeeded, to Edward Clark, deceased, plaintiff's intestate, on, to wit, the 14th day of March, 1882, and in consideration of the statements, representations and warranties contained in an application for insurance by said Edward Clark, which said application has been since, to wit, said last mentioned date, and until the organization of the defendant company, in the possession of said life association, and is now in the possession of the defendant, and in consideration of certain dues for expenses to be paid on or before the 10th day of March in each year during the continuance of said certificate or policy of insurance, and of the payment by the said Edward Clark of certain mortuary assessments within thirty days after notice of each assessment, each of said assessments to be made whenever the death fund of the said life asso-

ciation should be insufficient to meet any existing claim
9 by death, and to be for such a sum as had been established by the board of trustees of the said life association according to the age of the plaintiff as per table endorsed on said certificate

or policy of insurance, the said life association promised to pay within ninety days after the receipt by the defendant of satisfactory evidence of the death of said Edward Clark, unto Eveline F. Clark, if then living, otherwise to the legal representative of said Edward Clark, the sum of ten thousand dollars (\$10,000.00). And the plaintiff says that the said Edward Clark died on, to wit, the 6th day of January, 1902, after the death of his said wife, Eveline F. Clark, who departed this life on, to wit, the 8th day of December, 1896, and that on, to wit, the 17th day of February, 1902, the plaintiff was duly appointed administrator of the said estate of the said Edward Clark deceased, and that on, to wit, the 18th day of February, 1902, after having duly qualified as such administrator, letters of administration on the said estate of the said Edward Clark, were granted to him, the plaintiff. And the plaintiff says that at the time the said Edward Clark became a member of the said life association, he was fifty-nine years of age, and that according to the said table endorsed on said certificate or policy of insurance, the rate of mortuary assessment for a person of said age was \$2.80 per thousand dollars of insurance, or \$28.00 for the ten thousand dollars of insurance covered by and contained in said certificate or policy of insurance of said Edward Clark, as aforesaid. From the said 14th day of March, 1882, when the said Edward Clark became a member of the said life association, as aforesaid, and when he was fifty-nine years of age, as aforesaid, up to, to wit, the 15th day of August, 1895, when the said Edward Clark was seventy-two years of age, the said Edward Clark paid to the said life association each and every assessment levied by the said life association and within thirty days of each notice thereof, each of said assessments being calculated upon the age of the said Edward Clark at the date of his said entry into the said life association, as aforesaid. On, to wit, the 15th day of August, 1895, the said life association illegally and without notice to or consent of the said Edward Clark, changed the method and system of calculating mortuary assessments, and greatly increased the amount of said assessments thereafter made and levied upon the said Edward Clark, so that the said assessments made upon the said Edward Clark by the said life association after, to wit, said 15th day of August, 1895, were not based upon the age of the said Edward Clark at the time of his said entry into the said life association as aforesaid, but were based and calculated upon an arbitrary age arrived at by adding to the said age of the said Edward Clark at the date of his becoming a member of the said life association, to wit, fifty-nine years, one-half of the number of years from January 1st of said date, to wit, 1882, to, to wit, January 1st, 1895, fractions of a year resulting from divisions of a year to be counted as a full year. The said life association on, to wit, August 15th, 1895, upon the notices for the payment of mortuary assessments including those sent to the said Edward Clark, printed a new, different and illegal table of rates of assessment from that found upon the certificate or policy of insurance of the said Edward Clark, and according to which he had been theretofore assessed as

aforesaid, and proceeded to assess the said Edward Clark according to the said new, different and illegal table of rates. The effect of said change in the calculation of

11 said assessments based upon the said arbitrary age of the said Edward Clark, arrived at in the manner hereinabove mentioned, and of the change in the amount of said assessment based upon said new, different and illegal table of rates, as aforesaid, was to raise the amount of the mortuary assessments levied by the said life association upon the said Edward Clark, after, to wit, the 15th day of August, 1895, to the sum of \$112.80 for each of said assessments for which said assessments the defendant sent to the said Edward Clark notices for the payment thereof with said new, different and illegal table of rates thereon, as aforesaid. The said Edward Clark paid to the said life association each of the said last mentioned assessments within thirty days after notice thereof, the said certificate or policy of insurance providing for the lapse and cancellation thereof in the event of non-payment of assessments within thirty days after notice. The plaintiff says that on, to wit, the 1st day of February, 1898, the said life association illegally and without notice to and without the consent of the said Edward Clark again changed the method and system of assessing the said Edward Clark so that each mortuary assessment levied upon said Edward Clark by the said life association after said last-mentioned date, and of which he received notice, was illegally based and calculated upon the age of said Edward Clark, on, to wit, said February 1st, 1898, which said age of said Edward Clark at said last-mentioned date was seventy-five years, and which said assessments were also illegally based and calculated upon and in accordance with the said hereinbefore mentioned new, different

12 and illegal table of rates of assessment printed on the back of said notices of assessments as aforesaid. The effect of said new change of levying assessments upon said Edward Clark was to raise the amount of the said new and illegal assessment to the sum of \$235.90 for each assessment so levied upon the said Edward Clark by the said life association as aforesaid, on and after, to wit, said 1st day of February, 1896. The said Edward Clark, on, to wit, said last mentioned date, paid to the said life association within thirty days after receiving notice thereof, and under protest, the mortuary assessment for the sum of \$235.90, calculated by the said life association according to the hereinabove last-mentioned illegal method and system of levying mortuary assessments, as aforesaid. On, to wit, the 1st day of April, 1898, the said life association sent to the said Edward Clark a notice for the payment within thirty days of the date thereof of a mortuary assessment for the sum of \$235.90, calculated according to the hereinabove last-mentioned illegal method of levying assessments, as aforesaid, which last mentioned assessment called for by said last-mentioned notice, the said Edward Clark refused to pay, and did not pay, the same being levied upon him without his consent and being illegal, as aforesaid, and void. Thereupon and thereafter the said life asso-

ciation declared the said certificate or policy of insurance issued by it to said Edward Clarke, as aforesaid, lapsed and void, and refused to accept any further payments of mortuary assessments based on the said table endorsed on said certificate or policy as aforesaid, although tendered to said life association, by said Edward Clark within thirty days after the date of said last mentioned notice of assessment calling for the payment of the sum of \$235.90, as aforesaid, and refused to accept any payments of any kind under and

13 according to said certificate or policy of insurance. And the plaintiff says that the said Edward Clark during his life time paid to the said life association each and every mortuary assessment legally and properly levied upon him by the said life association within thirty days after each notice thereof and otherwise complied with all the terms and conditions of the said certificate or policy of insurance. And the plaintiff says that on, to wit, the 3d. day of March, 1902, he sent to the said life association satisfactory evidence of the death of the said Edward Clark, which said evidence was received by the said life association, on to wit, the 4th day of March 1902; and thereafter, the plaintiff, after expiration of ninety days after the receipt of said evidence by said life association of the death of said Edward Clark, made demand on and upon the said life association for the said sum of ten thousand dollars (\$10,000.00) justly due and payable to him by the same, but the defendant successor to said life association as aforesaid refused to pay to the plaintiff the said sum or any part thereof, and still refuses to do so, wherefore the plaintiff claims under this count of and from the defendant the sum of ten thousand dollars, with interest from the 31st day of October 1902, besides costs of suit.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

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Defendant's Pleas.

Filed March 23, 1903.

In the Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator, etc.,
vs.
THE MUTUAL RESERVE FUND LIFE ASSOCIATION. } Law. No. 45944.

The defendant for pleas to the several counts of the plaintiff's declaration says:

1. The defendant for plea to the plaintiff's declaration and the several counts thereof, says:

That it admits that on, to-wit., March 14, 1882, as set forth in the several counts of said declaration, defendant's predecessor, the Mutual Reserve Fund Life Association promised to pay to Eveline F. Clark, the wife of Edward Clark, now deceased, within 30 days of receipt of satisfactory evidence of the death of Edward Clark, if then living, otherwise to the legal representatives of the said Edward Clark, the sum of ten thousand dollars.

That said promise was made on the condition that the said Edward Clark would pay a certain admission fee which was paid by him, and also dues for expenses to be paid on or before the 10th day of March in every year during the continuance of the certificate of membership or policy of insurance hereinafter referred to, and upon the further condition that the said Edward Clark would, during the life of said policy of insurance pay certain mortuary assessments.

15 That said Edward Clark died on to-wit, January 8, 1902; that said Eveline F. Clark predeceased said Edward Clark, dying on to-wit, December 8, 1896, and that on February 18, 1902, the plaintiff was duly appointed by the supreme court holding a probate court, the administrator of said Edward Clark, and is the legal representative of said Edward Clark's estate.

That on to-wit, March 3, 1902, said plaintiff sent to the defendant satisfactory evidence of the death of the said Edward Clark, and that after the expiration of 90 days after receipt of the said evidence of the death of said Edward Clark by the said defendant, and on to-wit, October 28, 1902, the plaintiff demanded of and from the said defendant the sum of ten thousand dollars, which the defendant refused to pay.

But the defendant further says that the said contract to pay was based upon a certain application for membership in the Mutual Reserve Fund Life Association, made by the said Edward Clark, a copy of which is hereto attached and marked "Exhibit A," and it is evidenced by the certain policy of insurance following said application, a copy of which is hereto attached and marked Exhibit "B," but for

greater accuracy the original in the possession of the plaintiff is also referred to.

That by virtue of said application of membership and policy of insurance the said Edward Clark became and was a member of said association, and with relation to said policy subject to the laws of the State of New York, wherein said Mutual Reserve Fund Life Association was incorporated, and was subject to the charter, constitution, by-laws, rules and regulations of said association, and any and all amendments thereof passed and to be passed and adopted in pursuance of law, which laws and amendments thereto, relating to the subject of amendments are hereto attached and marked Exhibit "C," the same forming part of said contract for membership and insurance; that thereafter and in, to-wit, the month of December, 1883, said Mutual Fund Life Insurance Association re-incorporated under the laws of the State of New York, the membership of said Edward Clark being continued as before, and subject to the constitution, by-laws, rules and regulations hereinbefore referred to; that pursuant to the laws of the State of New York, and to the charter, constitution, by-laws rules and regulations made thereunder, the said association through its proper officers, and with the sanction of its members as given at their annual meetings and special meetings called therefor, levied certain mortuary assessments from time to time, as necessity required, changing the amount of the same in conformity with the laws of the State of New York under which the policy of insurance was issued, the charter, constitution, by-laws and regulations of said association, either in its original form or as re-incorporated after such re-incorporation took place, all of which in addition to the policy of insurance formed part of the contract of said Edward Clark with the defendant's predecessor and with it and all of which mortuary assessments together with annual dues were paid by the said Edward Clark until the levying of mortuary assessment No. 97 dated April 1, 1898.

That said mortuary assessment No. 97 was duly made pursuant to the laws of the State of New York, and under the charter, constitution, rules and regulations of the defendant association (by-laws then no longer existing), and its contract with said Edward Clark, and the amount thereof was duly and legally fixed by virtue of said contract, as shown by said application for membership, policy of insurance, laws of the State of New York, charter, constitution, by-laws rules and regulations, as will more fully appear by reference thereto, and notice thereof was duly served upon said Edward Clark, yet nevertheless said mortuary assessment was not paid, or offered to be paid by the said Edward Clark, and the subsequently accruing annual dues payable before the 10th day of March in each year were not paid or offered to be paid by him, and as a consequence of the non-payment of said mortuary assessment thirty days after April 1, 1898, and pursuant to said contract, said Edward Clark then ceased to be a member of said association, and all his rights and interests, and all the rights and interest- of his estate and of the beneficiaries under said

policy of insurance against the defendant company and its predecessor in interest absolutely ceased and determined and said Edward Clark thereafter did not pay or offer to pay any mortuary assessment to said association, and did not pay or offer to pay in accordance with his contract any annual dues thereto as required by his said contract, and the defendant prays judgment if the plaintiff ought to have or maintain its action against him.

II. And for a further plea to the plaintiff's declaration, and the several counts thereof, the defendant says that the plaintiff ought not to have or maintain this action against it because it says that said certificate of membership or policy of insurance number 3700 upon which this suit was brought wherein the defendant's
18 predecessor promised to pay within 90 days after receipt by defendant of satisfactory evidence of the death of said Edward Clark *until* Eveline F. Clark, if then living otherwise to the legal representatives of said Edward Clark, the sum of \$10000, was made and based upon a certain application for membership in the Mutual Reserve Fund Life Association made by the said Edward Clark a copy of which is hereto attached and marked Exhibit "A," and it is evidenced by the certain policy of insurance following said application, a copy of which is hereto attached and marked Exhibit "B," but for greater accuracy the original in the possession of the plaintiff is also referred to.

That by virtue of said application of membership and policy of insurance the said Edward Clark became and was a member of said association, and with relation to said policy subject to the laws of the State of New York, wherein said Mutual Reserve Fund Life Association was incorporated, and was subject to the charter, constitution, by-laws, rules and regulations of said association, and any and all amendments thereof passed and to be passed and adopted in pursuance of law, which laws and amendments thereto, relating to the subject of amendments are hereto attached and marked Exhibit "C," the same forming part of said contract for membership and insurance; that thereafter and in to-wit: the month of December 1883, said Mutual Reserve Fund Life Insurance Association re-incorporated under the laws of the State of New York, the membership of said Edward Clark being continued as before, and subject to the constitution, by-laws, rules and regulations hereinbefore referred to; that pursuant to the laws of the State of New York, and to the charter, constitution by-
19 laws, rules and regulations made thereunder, the said association through its proper officers, and with sanction of its members as given at their annual meetings and special meetings called therefor, levied certain mortuary assessments from time to time, as necessity required, changing the amount of the same in conformity with the laws of the State of New York under which the policy of insurance was issued, the charter, constitution, by-laws and regulations of said association, either in its original form or as re-incorporated after such re-incorporation took place, all of which in addition to the policy of insurance formed part of the

contract of said Edward Clark with the defendant's predecessor and all of which mortuary assessments together with annual dues were paid by the said Edward Clark until the levying of mortuary assessment No. 97 dated April 1, 1898.

That said mortuary assessment No. 97 was duly made pursuant to the laws of the State of New York, and under the charter, constitution, rules and regulations of the defendant association (by-laws then no longer existing), and its contract with said Edward Clark, and the amount thereof was duly and legally fixed by virtue of said contract, as shown by said application for membership, policy of insurance, laws of the State of New York, charter, constitution, by-laws, rules and regulations, as will more fully appear by reference thereto, and notice thereof was duly served upon said Edward Clark, yet nevertheless said mortuary assessment was not paid, or offered to be paid by the said Edward Clark and the subsequently accruing annual dues payable before the 10th day of March in each year were not paid or offered to be paid by him, and as a

20 consequence of the non-payment of said mortuary assessment 30 days after April 1, 1898, and pursuant to said contract, said Edward Clark then ceased to be a member of said association, and all his rights and interests, and all the rights and interest of his estate and of the beneficiaries under said policy of insurance against the defendant company and its predecessor in interest absolutely ceased and determined.

Without this that the said Edward Clark during his lifetime paid to the said life association each and every mortuary assessment legally and properly levied upon him by the said life association within 30 days after each notice thereof, and otherwise complied with all the terms and conditions of the said certificate or policy of insurance, and this he is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain his aforesaid action against it.

III. And for further plea to the plaintiff's declaration and the several counts thereof, the defendant says that it and its predecessor in interest do not owe the plaintiff in the manner and form as therein set forth.

RALSTON & SIDDONS,
Defendant's Attorneys.

Exhibit "A"

NOT WRITE ON IT OR DEFACE IT.

Solicitor.

FORM 1.

Name of Member,

This abstract of the Application is to be filled up at the Office only.

Number 2700

Received _____ Age _____ years.

Date first payment, Mar. 10

Approved by _____ M.D.

Admission Fee, \$ _____

Date regular " 10

Declined _____ M.D.

Dues, - - \$ _____

Date of issue, " 13

Certificate written by _____

How Payable, _____

Amount, \$ 10.000

APPLICATION FOR A MEMBERSHIP IN

The Mutual Reserve Fund Life Association.

OFFICE: BENNETT BUILDING, CORNER FULTON AND NASSAU STREETS, NEW YORK.

COPY.

1. Name, at full length, of the person Applying for Certificate, Edward Clark

Occupation, If a Clerk, Salesman, or Merchant, state articles dealt in. If a Mechanic or Laborer, state what kind, Architect of U. S. Capital

Residence, Washington

Place of Business, 417 4th St

Shall Notice of Dues be addressed to last named person at place of business as stated? Yes

County _____ State D.C.

The "Place of Business," if not specially given, will be assumed to be the same as "Residence."

2. Name of the person for whose benefit the Certificate is issued, Evelyn F. Clark

Residence, _____ Relationship to the Applicant, Wife

3. Sum applied for, \$ 10.000

4. Are the dues payable annually or semi-annually? The dues, if paid annually in advance are \$2.00 per year. " " " semi-annually " " \$1.00

5. Place and Date of Birth of the Applicant? Philadelphia Pa 1822 Oct. 22

6. Person's age at nearest birthday? 67 Weight? 715 Height? 6 Whether married? Yes

- 7. A. Is the person now a member of this Association?
- B. Is the person's life now assured, if so, for how much and where?
- C. Has an application ever been made for assurance on this life, on which a policy was not issued for the full amount, and if the same kind as applied for, and at ordinary rates? If yes, by what Company, and when?
- D. Has any physician given an unfavorable opinion of the person's life?

- A. No
- B. \$1.000 Phoenix New York Life and Endowment
- C. No
- D. No

8. A. Ages and state of health if living, of the person's FATHER: A. AGE AND STATE OF HEALTH, IF LIVING. B. AGE AT DEATH. C. CAUSE OF DEATH.

THIS MARGIN IS FOR BINDING, DO NOT WRITE ON IT OR DEFACE IT.

Solicitor.
This application forwarded to the General Agency by

Residence, <u>Washington</u>		Shall Notice of Dues be addressed to last named person at place of business as stated? <u>Yes</u>											
County <u>D.C.</u> State <u>D.C.</u>		The "Place of Business," if not specially given, will be assumed to be the same as "Residence."											
2. Name of the person for whose benefit the Certificate is issued <u>Eveline F. Blarke</u>													
Residence, _____		Relationship to the Applicant, <u>Wife</u>											
3. Sum applied for, \$ <u>10.000</u>		4. Are the dues payable annually or semi-annually? <u>The dues, if paid annually in advance are \$2.00 per year</u>											
5. Place and Date of Birth of the Applicant?		PLACE.	COUNTY.	STATE.	YEAR.	MONTH.	DAY.						
<u>Philadelphia</u>		<u>Pa</u>	<u>1822</u>	<u>Oct.</u>	<u>22</u>								
6. Person's age at nearest birthday? <u>69</u>		Weight? <u>115</u>	Height? <u>6</u>	Whether married? <u>Yes</u>									
7. A. Is the person now a member of this Association?		A. <u>No</u>											
B. Is the person's life now assured, if so, for how much and where?		B. <u>21.000 Phoenix New York Life</u>											
C. Has an application ever been made for assurance on this life, on which a policy was not issued for the full amount, and if the same kind as applied for, and at ordinary rates? If yes, by what Company, and when?		C. <u>No</u>											
D. Has any physician given an unfavorable opinion of the person's life?		D. <u>No</u>											
8. A. Ages and state of health if living, of the person's <u>Parents</u>		FATHER. <u>No</u>		A. AGE AND STATE OF HEALTH, IF LIVING.		B. AGE AT DEATH.		C. CAUSE OF DEATH.					
B. If dead, at what ages, and of what diseases? *		MOTHER. <u>No</u>				<u>70</u>		<u>Old age</u>					
						<u>40</u>		<u>Dropsy</u>					
*IN giving the cause of death, avoid all indefinite terms, such as "General Debility," "Change of Life," "Fever," "Exposure," etc. If the word childbirth be used, how long after delivery did death occur, and were there any symptoms of Disease of the Chest, such as Cough, Expectoration, etc.													
9. How many has the person had?		How many living?		Their Ages and State of Health?		How many are dead?		At what ages did they die?		Of what diseases did they die?			
BROTHERS, {		<u>3</u>		<u>1</u>		<u>70 good</u>		<u>W</u>		<u>50 to 60</u>		<u>Some fever</u>	
SISTERS, {		<u>W</u>						<u>W</u>		<u>Infant</u>		<u>Don't know nothing trouble</u>	
10. Is the person now and usually in good health? <u>Yes</u>		When was the person successfully vaccinated? <u>Has been</u>											
11. Has the person ever had any serious illness, local disease, or personal injury? If yes, state nature, date, duration, and severity of attack.		<u>No</u>											
12. Have the person's habits of life always been correct and temperate?		<u>Yes</u>											
13. Is the person now engaged in or connected with the manufacture or sale of Beer, Wine, Whiskey, or any other Intoxicating Liquors?		<u>No</u>											
14. A. Does the person use Tobacco?		A. <u>No</u>											

THIS MARGIN IS FOR BINDING, DO NOT WRITE IN THIS MARGIN

This application forwarded to the General Agency by

B. If dead, at what ages, and of what diseases? *						
*IN giving the cause of death, avoid all indefinite terms, such as "General Debility," "Change of Life," "Fever," "Exposure," etc. If the word childbirth be used, how long after delivery did death occur, and were there any symptoms of Disease of the Chest, such as Cough, Expectoration, etc.						
	How many has the person had?	How many living?	Their Ages and State of Health?	How many are dead?	At what ages did they die?	Of what diseases did they die?
9						
BROTHERS,	3	1	70 good	✓	50 to 60	Some fever
SISTERS,	✓			✓	Infant 50	Don't know nothing trouble
10. Is the person now and usually in good health? <i>Yes</i> When was the person successfully vaccinated? <i>Has been</i>						
11. Has the person ever had any serious illness, local disease, or personal injury? If yes, state nature, date, duration, and severity of attack. <i>No</i>						
12. Have the person's habits of life always been correct and temperate? <i>Yes</i>						
13. Is the person now engaged in or connected with the manufacture or sale of Beer, Wine, Whiskey, or any other Intoxicating Liquors? <i>No</i>						
14. A. Does the person use Tobacco? <i>No</i> B. If so, to what extent?						
15. Name and residence of two personal friends to whom you refer?						
16. Name and residence of usual medical attendant? <i>Has none</i> <i>Grafton Tyler</i> <i>1300 30th</i> <i>Longton</i>						

DECLARATION: It is hereby declared and warranted that the foregoing answers and statements are full, complete, and true, and it is agreed that this declaration and warranty shall form the basis of the contract between the undersigned and THE MUTUAL RESERVE FUND LIFE ASSOCIATION, and are offered to said Association, as a consideration of the Contract applied for, and are hereby made part of the Certificate to be issued on this Application. And if any of the statements, representations or answers made herein are not true, full and complete, and if I or my representatives shall omit or neglect to make any payment as required by the conditions of such Certificate, then the Certificate to be issued hereon shall be null and void, and all money paid thereon shall be forfeited to said Association. And it is further agreed, that the Membership hereby applied for shall be subject to all the conditions and agreements contained in the Certificate of such Membership to be issued hereon. And it is further agreed, that the Association shall not be responsible, under said Contract, if the health of the applicant shall be impaired by the excessive use of narcotics or alcoholic stimulants.

NOTE BEFORE SIGNING.

The HUSBAND may sign for his WIFE, or the FATHER for his CHILDREN.
Dated at *Washington D.C.* 188*7*
This risk is approved and recommended by me, *D.M.B.*

Person for whose benefit Assurance is made.

Estline F. Clark

Person whose life is to be Assured.

Edward Clark

COPY

22

EXHIBIT No. B.

Filed April 28, 1898.

Filed March 23, 1903. J. R. Young, Clerk.

Mutual Reserve Fund Life Association.

No. 2700.

Age, 59.

Bennett building, corner Fulton and Nassau streets, New York.

In consideration of the statements, representations, and warranties contained in the application for this certificate of membership and of the admission fee paid, and of the dues for expenses, to be paid on or before the tenth day of March in every year during the continuance of this certificate and of all mortuary assessments, payable at the office of the association within thirty days from the date of each notice, the Mutual Reserve Fund Life Association does hereby receive Edward Clark, of Washington, District of Columbia, United States of America, as a member of said association.

Whenever the death fund of the association is insufficient to meet an existing claim by death, an assessment shall be made upon the entire membership in force at the date of such death, for such a sum as has been established by the board of trustees, according to the age of each member, as per table endorsed hereon, and the sum received from such assessment (less twenty five per cent. to be set apart for the reserve fund) shall go into the death fund.

Within ninety days after the receipt of satisfactory evidence to the association of the death of the above-named member, during the continuance of this certificate of membership there shall
23 be payable to Eveline F. Clark (wife) of Washington, District of Columbia, United States of America, if then living, otherwise to the legal representative of said member, the sum of ten thousand dollars from the death fund of the association at the time of said death, or from any monies that shall be realized to the said fund from the next assessment to be made as hereinabove set forth, and no claim shall be otherwise due or payable, except from the reserve fund as hereinafter provided.

The net earnings of the association, together with twenty-five per cent. received from each assessment, shall constitute a reserve fund, which shall be deposited with a trust company, and be securely invested in United States bonds, mortgages, or other interest-bearing securities, by said trust company, as trustee, for the exclusive benefit of the members of the association, and the interest on the same, as it accrues, shall be placed by the said trustee to the credit of the death fund. The reserve fund above \$100,000, and in excess of sums represented by outstanding bonds, shall be applied to the payment of claims in excess of the American experience table of

mortality, and when any claim by death is due, to making up any deficiency that may then exist in the death fund.

After the expiration of each period of five years, during the continuance of this certificate of membership, a bond will be issued (bearing interest at the rate of 4 per cent. per annum, payable annually to the death fund), for an equitable proportion of the reserve fund, and the principal of said bond shall be available ten years from its date towards paying future dues and assessments under this certificate; and, should membership hereunder cease by death or otherwise, any portion of said principal not thus used, shall be applied to increase the bonds issued at the next quinquennial apportionment to other members of the association holding certificates issued during the same year as this certificate.

No alteration of the terms of this contract shall be valid, and no forfeiture thereunder shall be waived, unless such alteration or waiver shall be in writing, and signed by the president and one other officer of the association.

No agent of the association has authority to make, alter or discharge contracts, waive forfeitures, extend credit, or grant permits.

This certificate is not binding until the first payments due thereunder shall have been fully received in cash by the association, or by some agent authorized to receive the same, and during the life of the said member.

A notice addressed to a member's post office address as appearing upon the books of the association, and deposited in the post office, postage paid, shall be deemed a sufficient notice.

Written notice of all assignments to be valid must be received and approved by the association.

This certificate is issued and accepted subject to the express condition that if any of the payments above stipulated shall not be paid when due, at the office of the association in the city of New York, or to an agent of the association furnished with a receipt signed by its president or secretary; or if the member during the continuance of this certificate shall engage in blasting, mining, submarine or aeronautic operations, or the production of highly inflammable or explosive substances; or upon a railroad as brakeman or baggageman, or as conductor of a freight train; or in working or managing a steam-engine in any capacity; or shall engage in service upon a sailing vessel, or shall enter any military or naval service whatsoever (the militia when not in actual service excepted), without the consent of this association therefor; in either of the foregoing cases, given in writing by the president or secretary thereof; or if the member shall die by his own hand, within two years from the date of this certificate, whether sane or insane, or if any of the statements, answers or declarations made in the application for this certificate, which application is hereby referred to and made a part hereof, are in any respect untrue; then, and in each and every such case, this certificate shall be null and

void, and all payments made thereon shall be forfeited to the association.

In witness whereof, the said Mutual Reserve Fund Life Association has caused its corporate seal to be hereunto affixed, and these presents to be signed by its president or vice-president and secretary, at the city of New York, this fourteenth day of March, one thousand eight hundred and eighty two.

E. B. HARPER, *President*.

W. A. BUTTS, *Secretary*.

[SEAL.]

26

EXHIBIT "C."

Filed March 23, 1903.

Laws.

CHAPTER 267, LAWS OF 1875, SECTION 1.

"Any five or more persons, of full age, citizens of the United States, a majority of whom are also citizens of this State, who desire to form themselves into a society or club for social, *mutual benefit*, *benevolent* purposes, may sign and acknowledge," etc.

Section 2 provides that any corporation so organized shall have power—

"To make and adopt a constitution, by-laws, rules and regulations for the government of said corporation, and for the admission, voluntary withdrawal, censure, suspension and expulsion of its members for the establishing and collection of the fees and dues of its members, the number and regulation of its officers, and to define their duties and compensation, and for the safekeeping of its property, and from time to time to alter, modify or change such constitution, by-laws, rules and regulations."

106th session, chapter 1. An act to provide for the incorporation and regulation of co-operative or assessment life and casualty insurance associations and societies.

"SECTION 1. Any number of persons not less than nine, residents of the State of New York, hereafter desiring to form an organization, fraternal or non-fraternal, for the purpose of transacting the business of life or casualty insurance, or both life and casualty insurance, upon the coöperative or assessment plan, may associate themselves together and effect such organization as hereinafter prescribed and not otherwise.

"SECTION 2. Such persons shall file in the office of the superintendent of the insurance department a declaration signed by each of the incorporators and duly acknowledged before an officer authorized under the laws of this State to take the acknowledgment of deeds,

and shall therein express their intention to form an organization for the transaction of life or casualty insurance, or both, upon the co-operative or assessment plan, which said declaration shall also contain the proposed name of the association, corporation or society (which shall not be the same as, nor too closely resemble, the name of any other corporation organized under the laws of this State); the place where the principal office for the transaction of its business shall be located, which shall be at some place within this State, the mode and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing the trustees, directors or representatives, or other persons, by whatever name or title designated, who are to have and exercise the general control and management of its affairs, and all its funds, which election shall be in such manner as shall be prescribed by the by-laws of such corporation, association or society or in case of fraternal societies, by representatives chosen, by subordinate lodges, councils or bodies; who shall be numbers of such society and a majority of them citizens of this State.

28 "SECTION 12. Any existing corporation, association or society trans-
acting business of life or casualty insurance, or both, upon the
coöperative or assessment plan, and incorporated under the
laws of this State, may reincorporate under the provisions of this
act by filing with said superintendent the declaration required by the
second section of this act, signed and duly acknowledged by a majority
of its board of directors, trustees or managers, and the certificate of con-
formity from the attorneys general of the State whereupon the said
superintendent shall record and deliver to such corporation, associa-
tion or society a certified copy of such declaration, and such certifi-
cate, together with his license to transact business, and upon the same
being filed in the office of the clerk of the county wherein the prin-
cipal office for the transaction of its business is located, the same
shall thereupon be deemed to be incorporated under the provisions
of this act. Provided always, that nothing in this act contained
shall be construed as requiring or making it obligatory upon any
such existing corporation, association or society to reincorporate
under the provisions of this act; and any such existing corporation,
association or society may continue to exercise all rights, powers
and privileges not inconsistent with this act, pursuant to its article
of association or incorporation, the same as if reincorporated under
this act.

Charter.

SECTION 2.—*Certificate of Incorporation.*

29 "Second. That the particular business and object of such society
is the mutual benefit of ourselves, and all others who may become
members of the society by providing benefits for families, and others
dependent upon such members by means of voluntary con-
tributions to meet exigencies occurring from time to time, and
to provide a fund for the common and exclusive benefit of
all the members."

SECTIONS 4 AND 5.—*Certificate of Re-incorporation.*

"Fourth. The mode and manner in which the corporate powers granted are to be exercised are by issuing certificate of membership, policy or other evidence of interest to, and promise or agreement with its members, whereby upon the decease of a member, money, or other benefit, charity, relief, or aid, is to be paid, provided, or rendered by said corporation or association to the legal representatives of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief or aid are derived from voluntary donations, or from admission fees, dues, and assessments, or some of them, collected, or to be collected from the members thereof or members of a class therein, and interest and accretions thereon, or rebates from amounts payable to beneficiaries or heirs, and wherein the paying, providing or rendering of such money or other benefit, charity, relief or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief or aid so realized is applied to the uses and purposes of said corporation or association; and the expenses of the management and prosecution of its said business."

"Fifth. The mode and manner of electing the directors of said association or corporation who are to have and exercise the general control and management of its affairs and all its funds, 30 which election shall be in such manner as shall be prescribed by the by-laws of said corporation or association is by election at the annual meeting of the members by vote in person or by proxy duly filed with the secretary of said association or corporation at least ten days prior to such election; and divided into four classes whereby the terms of not less than three such directors shall expire each year, excepting in the event of a failure to elect directors at any such annual meeting the directors whose term of office does not expire shall have power, acting as a board, to elect directors to fill the vacancies caused by such failure so elect, and in case of any vacancy in the board at any time, the board of directors shall have power to fill said vacancy for the unexpired term."

Constitution, By-laws, Rules, and Regulations.

Constitution of 1881, article 9, section 3.

Struck out by consent.

CHARLES L. FRAILEY.
RALSTON & SIDDONS.

SECTION 8, BY-LAWS OF 1882.

"Whenever the death fund of the association is insufficient to meet an existing claim by death, an assessment shall be made upon the entire membership in force at the date of such death for such a

sum as the board of directors shall have established and published according to the age of each member, and the net sum received from such assessment (less twenty-five per cent. to be set apart for the reserve fund) shall go into the death fund."

SECTION 9, BY-LAWS OF 1882.

31 "The assessment rate for each member according to the age taken from the nearest birthday, shall be as follows: (Here follows table.)

Constitution and By-laws of January, 1883.

These provide for assessments at regular intervals for accrued death losses, amounts and rates of assessment to be fixed by the board of directors, and the table of rates in the by-laws changed from the rate fixing the rate of assessment to a table fixing the basis of the assessment rate, the actual amount of each assessment to be determined upon that basis by the board of directors. Periods for levying assessments were at first fixed as quarterly throughout the year, which, by subsequent resolution of the board, was changed so as to fix the periodical assessments at bi-monthly intervals.

Constitution and By-laws Adopted January 14, 1885.

ARTICLE 2, SECTION 4.

"The corporate powers of the association shall be vested in the board of directors, who shall have power to adopt such by-laws as they deem necessary, not inconsistent with this constitution, and to amend the same. And to fix the amount and rate of assessments, fees and dues; and to enact rules and regulations for the government of officers and employees, and for the management of the affairs of the association.

32 "SECTION 5. On the first week day of the months of February, April, June, August, October and December of each year (or at such other dates as the board of directors may, from time to time, determine) an assessment shall be made upon the entire membership in force, at the date of the last death of the audited death claims prior thereto, for such a sum as the executive committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members, according to the age of each member.

"A member failing to receive a notice of an assessment, on the first week-day of February, April, June, August, October and December, for his share of the losses occurring during the time specified, it shall be his duty to notify the home office, in writing, of such fact.

"A failure to pay the assessment within thirty days from the first week-day of February, April, June, August, October and December (or within thirty days from the day of the date of such periods as may be named by the directors), shall forfeit his membership in this association, with all rights thereunder, and the certificate of membership shall be null and void.

ARTICLE XI, SECTION 1.

"This constitution may be revised or amended at any annual meeting of the association, or at a special meeting of the members called for that purpose, by a two-thirds vote of the members present in person or by proxy, but no such amendments shall be considered unless the same shall have been submitted in writing to the executive committee, at least thirty days previous to such annual or special meeting, except by unanimous consent of the members present at such meeting.

BY-LAWS, SECTION 8.

"The basis of the assessment rate for each member according to the age taken from the nearest birthday, on each \$1,000, shall be as follows:

33

Age.	Rate.	Age.	Rate.	Age.	Rate.	Age.	Rate.	Age.	Rate.
15 to 25	\$1.00	34	\$1.20	42	\$1.52	50	\$2.00	58	\$4.00
26.....	1.02	35	1.24	43	1.56	51	2.25	59	4.25
27.... ..	1.04	36	1.28	44	1.60	52	2.50	60	4.50
28.....	1.06	37	1.32	45	1.64	53	2.75	61	5.00
29.....	1.08	38	1.36	46	1.68	54	3.00	62	5.50
30.....	1.10	39	1.40	47	1.72	55	3.25	63	6.00
31.....	1.12	40	1.44	48	1.76	56	3.50	64	6.50
32.....	1.14	41	1.48	49	1.80	57	3.75	65	7.00
33.... ..	1.16								

Constitution or By-laws Adopted January 26, 1887.

"ART. 2, SEC. 4. The corporate powers of the association shall be vested in the board of directors, who shall have power to adopt such rules and regulations, as they deem necessary, not inconsistent with this constitution or by-laws, and to amend the same. And to fix the amount and rate of assessments, fees, and dues; and to enact rules and regulations for the government of officers and employees, and for the management of the affairs of the association.

ARTICLE 3, SECTION 2.

"The directors shall elect three of their number, who shall constitute an executive committee, who shall appoint such medical ex-

aminers as they deem necessary, audit death claims, and shall determine all salaries and expenses, and shall have the power to make contracts with general agents and others for the furtherance of the business of the association, and for the benefit of its members. And, under the regulations of the board, they shall, also, exercise a general supervision over the business of the association."

ARTICLE 11, SECTION 5.

On the first week-day of the months of February, April, 34 June, August, October and December of each year (or at such other dates as the board of directors may, from time to time, determine) an assessment shall be made upon the entire membership in force, at the date of the last death of the audited death claims prior thereto, for such a sum as the executive committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members, according to the age of each member.

"A member failing to receive a notice of an assessment on the first week-day of February, April, June, August, October and December, for his share of the losses, occurring during the time specified, it shall be his duty to notify the home office, in writing, of such fact.

"A failure to pay the assessment within thirty days from the first week-day of February, April, June, August, October and December (or within thirty days from the day of the date of such periods as may be named by the directors), shall forfeit his membership, in this association, with all rights thereunder, and the certificate of membership shall be null and void."

ARTICLE XII, SECTION 1.

"This constitution or by-laws may be revised or amended at any annual meeting of the association, or at a special meeting of the members called for that purpose, by a two-thirds vote of the members present in person or by proxy, but no such amendment shall be considered unless the same shall have been submitted in writing to the executive committee at least thirty days previous to such annual or special meeting, except by unanimous consent of the members present at such meeting."

35 *Constitution or By-laws as Adopted January 25, 1888.*

ARTICLE II, SECTION 4.

"The corporate power of the association shall be vested in the board of directors, who shall have power to adopt such rules and regulations as they deem necessary, not inconsistent with this constitution or by-laws, and to amend the same; and to fix the amount and rate of assessments, fees and dues; and to enact rules and regulations for the government of officers and employees, and for the management of the affairs of the association."

ARTICLE III, SECTION 2.

"The directors shall elect three of their number who shall constitute an executive committee, who shall appoint such medical examiners as they deem necessary, audit death claims, and shall determine all salaries and expenses, and shall have the power to make contracts with general agents and others for the furtherance of the business of the association, and for the benefit of its members. And, under the regulations of the board, they shall also exercise a general supervision over the business of the association."

ARTICLE XI, SECTION 5.

"On the first week day of the months of February, April, June, August, October and December of each year (or at such other dates as the board of directors may, from time to time, determine) an assessment shall be made upon the entire membership in force, at the date of the last death of the audited death claims prior thereto, for such a sum as the *the* executive committee may deem sufficient to meet the existing claims by death, the same to be apportioned among the members, according to the age of each member.

36 "A member failing to receive a notice of an assessment, on the first week day of February, April, June, August, October and December, for his share of the losses occurring during the time specified, it shall be his duty to notify the home office in writing of such fact.

"A failure to pay the assessments within thirty days from the first week day of February, April, June, August, October and December (or within thirty days from the day of the date of such periods as may be named by the directors), shall forfeit his membership in this association, with all rights thereunder, and the certificate of membership shall be null and void."

ARTICLE XII, SECTION 1.

"This constitution or by-laws may be revised or amended at any annual meeting of the association, or at a special meeting of the members present in person or by proxy, but no such amendments shall be considered unless the same shall have been submitted in writing to the executive committee at least thirty days previous to such annual or special meeting, except by unanimous consent of the members present at such meeting."

Resolution of Members of the Association, January 23, 1889.

"Whereas, the Mutual Reserve Fund Life Association was established upon the natural premium system of life insurance, which requires the members to pay simply their proportion of the death claims, with 33 % additional thereto, which additional sum has for

its object the creation of a reasonable surplus reserve emergency fund to provide against unfor-seen contingencies, its foundation principle being in opposition to accumulations of vast sums of money taken from the pockets of the policy holders, and

37 "Whereas, the aforesaid surplus reserve *fund* emergency fund is rapidly increasing and has already reached the enormous sum of one million eight hundred and eighty-five thousand dollars, therefore,

"Resolved that in the event any sums are hereafter required for the payment of death claims in excess of the sums realized from current bi-monthly premiums calls at the maximum rates at age of entry as established by the association that are applicable to the death fund, the board of directors shall have power to pay such death claims in excess thereof from the current receipts that are applicable to the surplus reserve emergency fund, provided that said surplus reserve fund shall always be maintained at a sum not less than two million dollars, but nothing in this resolution shall conflict with the provisions of the constitution and by-laws."

Resolution of the Board of Directors, Dated June 12, 1895.

"Whereas, the fundamental principle of the natural premium system of life insurance, upon which this association was established, is the equitable apportionment of the actual death cost among the members according to the age of, and amount of insurance held by, each, which apportionment can be made in advance for any given period as an approximation only, and, therefore, never, until after the expiration of such period, as a finality; and

38 "Whereas, the superintendent of insurance of the State of New York, in the report of his recent examination of this association, officially calls our attention to the fact that inequality exists in the present mode of apportionment, in that members admitted in the earlier years of the association are being carried at a cost to them much below the benefits which they are receiving, and inasmuch as "the right to change the assessment rates to correspond to present age, exists in the constitution or by-laws," recommends that such action be taken by the board of directors 'at the earliest opportunity,' as will remedy such inequality; and

"Whereas, members admitted prior to January 1, 1890, have, by the operation of the resolution adopted by the members in annual meeting January 23, 1889, (by which resolution the board of directors was empowered to use for the payment of death claims 'in excess of the sums realized from current bi-monthly mortuary premium calls at the maximum rates at age of entry,' 'the current receipts that are applicable to the surplus reserve emergency fund'), enjoyed great benefits and had large savings in direct premium calls payments, in that their assessment rates have thereby up to the present time been maintained at rates of age of entry in place of being advanced, as would otherwise have been necessary, to rates at advanced ages; and

"Whereas, the actuary of the association has reported that in his opinion a reapportionment of the rates of assessments upon members admitted prior to January 1, 1890, on a basis of one-half the increase of age since admission (counting fractions of years as full years) will provide such present increased mortuary revenue as will charge such members with the cost of benefits received and remedy the aforesaid inequality, while any surplus resulting therefrom will be credited to these members and returned to them at stated
39 periods as their contracts provide; therefore,

"Be it resolved, That the rates of assessment for all members of this association admitted prior to January 1, 1890, be and the same hereby are reapportioned, in accordance with the table of assessment rates now in use, to rates indicated by adding to the age of entry, one-half the number of years from January 1st of the year of admission to January 1, 1895, fractions of years resulting from the division to be counted as full years, and that said reapportioned rates of assessment, together with the present rates of assessment for all members admitted since December 31, 1889, constitute the rates of assessment of this association beginning with call No. 81 until otherwise ordered by this board; provided, however, that any increase beyond the rate indicated for more than seventy years may, at the member's option, be debited to his policy and deducted from the amount payable thereunder, instead of being paid in cash.

EXHIBIT "A," JUNE 12, 1895. Charles W. Camp, Secretary.

Table of Assessment Rates for Each \$1,000 of Insurance (Not Including Dues) at Current Ages, Now in Use, June 12th, 1895.

40 Age.	Bi-monthly.	Annually.	Age.	Bi-monthly.	Annually.
25.....	1.80	10.80	53.....	4.16	24.96
26.....	1.81	10.86	54.....	4.53	27.18
27.....	1.82	10.92	55.....	4.91	29.46
28.....	1.84	11.04	56.....	5.28	31.68
29.....	1.86	11.16	57.....	5.66	33.96
30.....	1.87	11.22	58.....	6.03	36.18
31.....	1.89	11.34	59.....	6.41	38.46
32.....	1.91	11.46	60.....	6.78	40.68
33.....	1.94	11.64	61.....	7.53	45.18
34.....	1.96	11.76	62.....	8.28	49.68
35.....	1.99	11.94	63.....	9.03	54.18
36.....	2.02	12.12	64.....	9.78	58.68
37.....	2.05	12.30	65.....	10.53	63.18
38.....	2.09	12.54	66.....	11.28	67.68
39.....	2.13	12.78	67.....	12.03	72.18
40.....	2.20	13.20	68.....	13.00	78.00
41.....	2.25	13.50	69.....	14.19	85.14
42.....	2.31	13.86	70.....	15.50	93.00
43.....	2.37	14.22	71.....	16.92	101.52
44.....	2.43	14.58	72.....	18.47	110.82
45.....	2.49	14.94	73.....	20.04	120.24
46.....	2.57	15.42	74.....	21.76	130.56
47.....	2.67	16.02	75.....	23.59	141.54
48.....	2.78	16.68	76.....	25.55	153.30
49.....	2.91	17.46	77.....	27.77	166.59
50.....	3.06	18.36	78.....	30.21	181.25
51.....	3.41	20.46	79.....	32.94	197.60
52.....	3.78	22.68	80.....	36.12	216.71

Approved by the board June 12, 1895.

CHARLES W. CAMP, *Secretary.*

Resolution of the Board of Directors, Increasing the Amount of Assessments, Attached to Mortuary Call No. 81, Dated August 1, 1895.

“Whereas, the fundamental principle of the natural premium system of life insurance, upon which this association was established, is the equitable apportionment of the actual death cost among the members according to the age of, and amount of insurance held by, each, which apportionment can be made in advance for any given period as an approximation only, and, therefore, never, until
41 after the expiration of such period, as a finality; and

“Whereas, the superintendent of insurance of the State of New York, in the report of his recent examination of this association, officially calls our attention to the fact that inequality exists in the present mode of apportionment, in that members admitted in the earlier days of the association are being carried at a cost to them much below the benefits which they are receiving, and, inasmuch as ‘the rights to change the assessment rates to correspond to present age, exists in the constitution or by-laws,’ recommends that such action be taken by the board of directors ‘at the earliest opportunity,’ as will remedy such inequality; and

“Whereas, members admitted prior to January 1, 1890, have, by the operation of the resolution adopted by the members in annual meeting January 23, 1889 (by which resolution the board of directors was empowered to use for the payment of death claims ‘in excess of the sums realized from current bi-monthly mortuary premium calls at the maximum rates at age of entry,’ ‘the current receipts that are applicable to the surplus reserve emergency fund’) enjoyed great benefits and had large savings in direct premium calls payments, in that their assessment rates have thereby up to the present time been maintained at rates at age of entry in place of being advanced, as would otherwise have been necessary, to rates at advanced ages; and

“Whereas, the actuary of the association has reported that in his opinion a reapportionment of the rates of assessments upon members admitted prior to January 1, 1890, on a basis of one-half the increase of age since admission (counting fractions of years
42 as full years) will provide such present increased mortuary revenue as will charge such members with the cost of benefits received and remedy the aforesaid inequality, while any surplus resulting therefrom will be credited to these members and returned to them at stated periods as their contracts provide; therefore,

“Be it resolved, That the rates of assessment for all members of this association admitted prior to January 1, 1890, be and the same hereby are reapportioned, in accordance with the table of assessment rates now in use, to rates indicated by adding to the age of entry, one-half the number of years from January 1st of the year of admission to January 1, 1895, fractions of years resulting from the division to be counted as full years, and that said reapportioned rates of assessments, together with the present rates of assessments

for all members admitted since December 31, 1889, constitute the rates of assessments of this association, beginning with call No. 81, until otherwise ordered by this board; provided, however, that any increase beyond the rate indicated for more than seventy years may, at the members' option, be debited to his policy and deducted from the amount payable thereunder, instead of being paid in cash."

Resolution of Stockholders Dated January 26, 1898.

"Resolved: That the action taken by the board of directors, as announced, for the reapportionment of the rates of the members who belong to the fifteen year class, in accordance with
43 rates at attained age under the table if rates upon which the member- of said class are paying, is hereby approved and ratified and the management is hereby directed to put such reapportionment into operation from and after call No. 96, for the reason that such reapportionment is in accordance with the terms of the contracts held by this class, is made in virtue of the power reserved to the association, corresponds with the actual mortality experience of the association and is necessary to equity and the proper adjustment of the mortality cost in the entire association among the several classes of policy-holders, the entire over payments of the members of said fifteen year class, available to the reduction of rates below those for attained or current age in accordance with the table of rates upon which said members have been and are now assessed, having been employed for that purpose and exhausted."

*Resolution of the Board of Directors Attached to Mortuary Call No. 96,
Dated February 1, 1898.*

"Whereas, the foundation principle of the business of this association (as of all sound life insurance) requires that each member shall contribute his equitable proportionate share based upon the experience of the entire membership of the association, and in accordance with age and amount of insurance, to the mortality cost as determined by the actual death losses incurred; and

"Whereas, under a form of contract which provides for the meeting of current cost by current collections, as does the fifteen year plan of this association, the basis of rates, as provided in said
44 form of contract, is and must be the current, as distinct from the entry, age, and in order to secure equity and sufficiency in payment by policy holders, rates must follow, as therein provided, the natural law of increasing cost due to increasing age; and

"Whereas, the actuary of the association, as the result of a careful examination and computation, has reported that the proceeds of calls based upon the rates for the respective ages at which the members belonging to the class represented by the fifteen year plan, have, since August 1, 1895, been assessed, are now sufficient to meet

the share of death claims of the association properly chargeable to this class, upon the standard above set forth, such insufficiency being due to the natural advance in cost among this class due to the increased age of the members; and

"Whereas, the actuary of the association has further reported that there is not at this time existent and available any surplus belonging to this class and applicable to the reduction of the natural cost of the insurance, and that, therefore, future calls should be in accordance with the rates based upon the respective full current or attained age of each member belonging to this class, such age to be determined from the last birthday of each member respectively, and that such basis of calls corresponds with the actual mortality experience of the association, and is necessary to equity and sufficiency of payments for meeting death claims; therefore,

45 "Be it resolved, That pursuant to the terms of the contracts with the members, and in virtue of the power reserved to the association, for call No. 96, to issue and become payable February 1, 1898, and for all subsequent calls until otherwise ordered by the board of directors, the rate of assessment for each member of this association holding a policy or policies upon the fifteen year plan, shall be determined from the table of assessment rates now in use, and under which said policies have hitherto been assessed, and upon the basis of the completed age in years of each member respectively, and of the amount of insurance by him carried at the date of each call."

46

Stipulation.

Filed April 1, 1903.

In the Supreme Court of the District of Columbia.

WATSON F. CLARK

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY.

} Law. No. 45944.

It is stipulated by and between the attorneys for plaintiff and defendant that the following corrections may be made in the pleas:—

On page 2, change "December, 1888" to "December, 1883."

On page 5, make the same correction.

On the third line of page 4, strike out the word "ninety," and insert "thirty."

CHARLES L. FRAILEY,
Plaintiff's Attorney.
RALSTON & SIDDON,
Defendant's Attorney.

47

Demurrer to Defendant's 1st and 2d Pleas.

Filed April 7, 1903.

In the Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator,	}	At Law. No. 45944.
<i>vs.</i>		
THE MUTUAL RESERVE LIFE INSURANCE Company.		

The plaintiff says that the defendant's first and second pleas to the plaintiff's declaration are bad in substance.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

NOTE.—Among the matters of law to be argued in support of the foregoing demurrer are the following:

I.

1. That the said first plea is bad because it sets up matters of law and not of fact.

2. Because in so far as it purports to set forth the laws of the State of New York and the by-laws and rules and regulations of the defendant and its predecessor passed subsequent to the date of the certificate or policy of insurance of the plaintiff's intestate and that the same affected his assessment under the said certificate and increased the rate thereof, it does not state that the same were made or passed with his knowledge or consent.

48 3. That said first plea so far as the same purports to be a plea to the third, fourth and fifth counts of the plaintiff's declaration makes no defence, and is bad because it does not allege among other things that at the time mortuary assessment (so called) No. 97 was made, the death fund of the defendant's predecessor was insufficient to meet an existing claim by a death; or that the plaintiff's intestate failed to pay the sum of \$28.00 as an assessment whenever called upon so to do by the defendant's said predecessor, said life association after thirty days' notice, to that effect; or that said certificate or policy of insurance did not provide that the said sum of \$28.00 should be the amount of each assessment made thereunder; or that the said sum of \$28.00 was increased to the amount named in said mortuary call No. 97 with the consent of the insured.

4. That the fact that the defendant or its predecessor passed regulations or resolutions or by-laws changing the amount of the assessments so as to be larger than and inconsistent with those provided for in the certificate or policy of insurance and the table of rates

endorsed thereon subsequent to the date thereof without the consent of the plaintiff's intestate would not affect the rate of assessment payable by the insured so provided for in the said certificate; and such rules, regulations, or resolutions are void as to said insured in so far as they attempt to change his vested rights under the policy.

5. Because it is no defence to plead a failure to pay an assessment levied under rules, regulations or resolutions not binding upon the insured; as a notice to pay an illegal assessment is equivalent to no notice at all, and there can be no forfeiture without due notice.

6. The said first plea is bad for duplicity and uncertainty.

49

II.

1. The defendant's second plea is bad, because it sets up matters of law and not of fact.

2. The inducement is equivalent to a confession and avoidance.

3. The said second plea so far as the same purports to be a plea to the third, fourth and fifth counts of the plaintiff's declaration makes no defence, and is bad because it does not allege among other things that at the time mortuary assessment (so called) No. 97 was made, the death fund of the defendant's predecessor was insufficient to meet an existing claim by a death; or that the plaintiff's intestate failed to pay the sum of \$28.00 as an assessment whenever called upon so to do by the defendant's said predecessor, said life association after thirty days' notice, to that effect; or that said certificate or policy of insurance did not provide that the said sum of \$28.00 should be the amount of each assessment made thereunder; or that the said sum of \$28.00 was increased to the amount named in said mortuary call No. 97 with the consent of the insured.

4. That the fact that the defendant or its predecessor passed regulations or resolution or by-laws changing the amount of the assessments so as to be larger than and inconsistent with those provided for in the certificate or policy of insurance and the table of rates endorsed thereon subsequent to the date thereof without the consent of the plaintiff's intestate would not affect the rate of assessment payable by the insured so provided for in the said certificate; and such rules, regulations or resolutions are void as to said insured in so far as they attempt to change his vested rights under the policy.

5. Because it is no defence to plead a failure to pay an assessment levied under rules, regulations or resolutions not binding upon the insured; as a notice to pay an illegal assessment is equivalent to no notice at all, and there can be no forfeiture without due notice.

6. That said second plea is bad for duplicity and uncertainty.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

In the Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator,	}	At Law. No. 45944.
vs.		
THE MUTUAL RESERVE LIFE INSURANCE Company.		

Ralston & Siddons, attorneys for defendant:

Take notice that I shall call up for argument, the annexed demurrer, before Mr. Justice Barnard, holding circuit court No. 1, on Friday, the 17th day of April, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

51 Supreme Court of the District of Columbia.

FRIDAY, June 19, 1903.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

WILSON F. CLARK, Administrator, Plaintiff,	}	At Law. No. 45944.
vs.		
MUTUAL RESERVE LIFE INSURANCE Co., Defendant.		

Upon hearing the demurrer of the plaintiff to the first and second pleas of the defendant to the declaration herein, it is considered that said demurrer be, and hereby is, overruled.

52 *Opinion of the Court.*

Filed June 19, 1903.

In the Supreme Court of the District of Columbia.

WILSON F. CLARK, Administrator, &c.,	}	No. 45944. Law.
vs.		
MUTUAL RESERVE LIFE INSURANCE COMPANY.		

This suit is based upon a contract of life insurance made by the Mutual Reserve Fund Life Association, a corporation organized under the laws of New York, to which the defendant corporation is now the successor.

The policy was issued on the life of Edward Clark, the plaintiff's intestate, in March 1882, for the sum of \$10,000.

The insured was fifty-nine years old when the contract was made, and the payment required of him, on the death of a fellow-member, as per rate then understood for members entering at his age, was \$28.00 or \$2.80 per thousand.

These payments were made as required to August 1895, when the association, by its corporate action, required these payments to be greater, namely, \$112.80, or \$11.28 per thousand.

The assessments at the new rate were demanded of the intestate, and notice given that if not paid within thirty days, the policy would be cancelled; and on this demand and notice, the payments were duly made by the insured to February 1898, when the association again increased the assessment to \$235.90.

53 The first assessment of which the insured had notice under this last rate, was paid by him, under protest, he claiming that the said increase was made without authority of law, and was therefore invalid.

On April 1, 1898, notice was sent of a second mortuary assessment at the last named rate, \$235.90, which the said insured declined to pay, and thereupon the association declared the policy lapsed.

The said insured died on January 6, 1902, without making any further payments, and this suit was brought on January 22, 1903.

The defendant filed three pleas to the declaration; and the plaintiff filed a demurrer to the first and second pleas, stating several matters of law to be argued on the hearing. These pleas have annexed to them as exhibits, a copy of the application and policy; the laws of New York under which the said association, and the defendant, were incorporated; the constitution and by-laws of the association in force in 1882, when the policy was issued, as to the death fund and assessment rate; and various changes in the by-laws, or constitution, adopted afterwards, by the board of directors, and by what purports to be resolutions of the members, and stockholders, so called, which, as averred, properly authorized the increased rates.

These exhibits indicate that the rates of assessment, for new members were increased over the rates in vogue in 1882; and also that the association increased the rate of assessments to be paid by the old members, as set out in the declaration. It is argued by the plaintiff's counsel that this action was illegal and invalid so far as

54 it relates to the old members, and that plaintiff's intestate had a vested right to his insurance at the cost alleged to be fixed by the association at the time of his entry into the company, in 1882; and that his payments in all were equal to, or in excess of, that sum; and, therefore, the policy was still lawfully in force at the date of the intestate's death.

The language used in the policy as to amounts which may be required of the member, is this: "Whenever the death fund of the association is insufficient to meet an existing claim by death, an assessment shall be made upon the entire membership in force at the date of such death, for *such a sum as — been established by the*

board of trustees, according to the age of each member, as per table endorsed hereon," &c.

Preceding the table these words occur:

"Whenever an assessment is required, each survivor shall pay for each \$1,000. of the amount of his certificate, as follows," &c.

Then the table of rates follows, giving the rate for each age, from 15 to 65 years, the rate for 59 years being \$2.80.

There is reason to think that the association and the insured both understood this to be the rate then fixed by the trustees, for all mortuary assessments, and in this case, the same was acted upon until 1895, some thirteen years, when for some reason, deemed sufficient by the association, a higher rate was established, and paid, for some time, apparently without any protest.

I shall assume that the rates were increased in good faith, and by the proper officers, or meetings of members, so far as the present consideration is concerned, and confine my inquiry to the question of power. Could the association make any rules, by-laws, or
55 orders to increase the rate of assessments, after members were accepted? or must any increase of rates, to be valid, apply only to new members, and be established before or when they are admitted.

While it is probable in this case that both parties to the contract understood the assessments would be only \$28.00 still they were both aware that the association was a mutual organization, and that each person becoming a member must be presumed to know the constitution and by-laws, as well as the law authorizing the incorporation, and that the contract was made in view of such knowledge, and must be subject to all the provisions contained in such constitution, by laws and charter.

In the by-laws, the language used as to the amount of money to be paid on the death of a member is this:

"No. 9. *"The assessment rate for each member according to the age taken from the nearest birthday, shall be as follows:" &c.*

It is argued by defendant's counsel that this means the members should contribute ratably, in the proportion indicated by the table of rates, but that it did not prevent the trustees of the association from increasing the sums there named, provided the same proportion or relation was observed in the new rates as to members of the different ages.

Section one, of article nine of the constitution, provides that "the amount of the fees and dues, and the conditions in regard to the payment of the same, and in regard to the payment of assessments, shall be stated in the certificate issued to each member of the association."

It is claimed that this requires the exact, and apparently unchangeable rate, or amount of the assessment to be made, to be stated in the certificate, and that the language of the certificate or policy is intended to comply with this provision.
56

This may be what was intended, but the wording of the said section is such, that it may bear a different construction. While

the *amount* of the "*fees and dues*" is to be stated, it does not follow from the language used, that the *amount* of the *assessment*, is to be so stated. The *conditions* in regard to *payment*, both as to fees and dues, and as to *assessments*, must be so stated. The admission fee of \$30.00 is so stated, and also the annual dues of \$20.00, but the figures as to the assessments are only given in what is called the "*Assessment-rate table*."

It is claimed by defendant, that the mortuary assessment to be made in any case, is not limited to the sum named in the assessment-rate table, because in the very nature of the business, the fluctuations in membership, and in frequency of deaths, may require that rate to be increased in order to pay the amounts for which the association has given its promise; and that it was, therefore, intended that the total amount of any assessment should rest in the sound discretion of the board of trustees.

No way was provided by which death-losses could be paid, except by making assessments on the members, as the *fees and dues* provided for were intended for the expenses of conducting the business of the company.

The assessment plan of insurance, when first started, was based on the expectation that new lives would continually come in, so as to keep the membership up to a proper number, and to keep the cost down to a fair rate.

When new lives failed to come in and the members were growing old, the rates first thought to be sufficient, would no longer pay the death losses, and so such associations had to choose between two alternatives, to go out of business, or to increase the assessments to be paid by all the members.

The managers in this case chose the latter plan, and I am inclined to think they had ample authority for it; and the old members would be bound to pay the increased rate, or suffer their policies to lapse, and membership to cease, hard as that might appear to be against them.

This hardship results from the very nature of mutual insurance. No level rate is possible in such case, for no calculations can be made as to the future which will justify or warrant such rate for any certain period of time.

There is a conflict of authority in the cases cited, upon the question as to the power of an insurance company, partaking of the character of a mutual association, to so change a contract of insurance as to reduce the benefits to be paid on death of a member, without that member's consent. It is claimed by the plaintiff that the power does not exist, and whether benefits are reduced, or assessments increased, that such attempted action on the part of the association in either case, is void.

If that contention should be held to be correct, it must necessarily have a foundation in the absolute and unalterable certain level rate, fixed in the policy.

While both parties seem to have acted for thirteen years on the assumption of a level rate in this case, the contract, embracing as it

must, constitution, by-laws, and charter, does not, in my judgment, warrant that assumption.

58 I am disposed to give much weight to the case of *Crosby vs. Mutual Reserve Fund Life Association*, 78 N. Y. Sup. 237, and the cases there cited, as to this question. It seems to me, that the courts of New York, where the said association was incorporated, would be most likely to reach a sound conclusion as to the meaning of the contract of insurance made by it; and as to the power of said association, under the New York statutes, to change its rules so as to affect its members and policy holders.

The same ruling there made, seems to have been made in Georgia, Virginia, Tennessee, and perhaps other States, in similar cases. An instructive case is that of *Haydel v. Association*, 104 Fed. R. 718.

I am disposed to adopt the reasoning of these cases, because they arose in reference to this same company, and because I think they are sound in principle.

From these conclusions, it follows that the demurrer to the pleas in this case, must be overruled.

JOB BARNARD, *Justice*.

59 Supreme Court of the District of Columbia.

MONDAY, October 5, 1903.

Session resumed pursuant to adjournment, Mr. Justice Barnard, presiding.

WATSON F. CLARK, Administrator of the Estate of Edward Clark, Deceased, Plain- tiff,	} At Law. No. 45944.
vs.	
MUTUAL RESERVE LIFE INSURANCE COMPANY, Defendant.	}

The demurrer of the plaintiff to the pleas of the defendant having heretofore been overruled, the plaintiff, by his attorney, Charles L. Frailey, now comes into court and announces his intention to stand upon said demurrer; thereupon the defendant moves for judgment, which is granted; therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against the plaintiff its costs of suit to be taxed by the clerk, and have execution thereof.

Appeal noted by plaintiff to Court of Appeals.

60 In the Supreme Court of the District of Columbia.

WATSON F. CLARK, Administrator, <i>vs.</i> MUTUAL RESERVE LIFE INSURANCE COM- pany.	}	At Law. No. 45944.
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The President of the United States to Mutual Reserve Life Insurance Company, Greeting :

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal from a judgment rendered by the supreme court of the District of Columbia, on the — day of — 1903, wherein Watson F. Clark, administrator, is appellant, and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Harry M. Cla- baugh, chief justice of the supreme court of the District of Columbia, this 19th day of October in the year of our Lord one thousand nine hundred and three.
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JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 20th day of Oct., 1903.

RALSTON & SIDDONS,
Attorneys for Appellee.

[Endorsed:] No. 45944. Law. Watson F. Clark administrator
vs. Mutual Reserve Life Insurance Company. Citation. Issued
 Oct. 19'', 1903

61 *Memorandum.*

October 21, 1903.—Appeal bond filed.

Order for Transcript.

Filed November 13, 1903.

In the Supreme Court of the District of Columbia, the 13th Day of November, 1903.

WATSON F. CLARK, Adm'r,	}	At Law. No. 45944.
vs.		
MUTUAL RESERVE LIFE INS. CO.		

The clerk of said court will please prepare record in above entitled cause for Court of Appeals as follows:

- 1st. Declaration;
- 2d. Pleas Nos. 1 & 2 and exhibits;
- 3d. Stipulation of counsel, filed April 1, 1903;
- 4th. Demurrer to 1st. & 2nd. pleas;
- Overruling of demurrer and judgment thereon
- Appeal; citation; bond given, &c.

CHARLES L. FRAILEY,
Attorney for Plaintiff.

62 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,	}	ss:
District of Columbia,		

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 61, inclusive, to be a true and correct transcript of the record as per directions of counsel herein filed, copy of which is made part of this record, in cause No. 45,944, at law, wherein Watson F. Clark, administrator of the estate of Edward Clark, deceased, is plaintiff, and The Mutual Reserve Life Insurance Company is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia	In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 3rd day of December, A. D. 1903.
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JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1384. Watson F. Clark, administrator, appellant, vs. Mutual Reserve Life Insurance Company. Court of Appeals, District of Columbia. Filed Dec. 3, 1903. Robert Willett, clerk.

ADDITION TO RECORD PER STIPULATION OF
COUNSEL.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1904.

No. 1384.

WATSON F. CLARK, ADMINISTRATOR, APPELLANT,

vs.

MUTUAL RESERVE LIFE INSURANCE COMPANY.

FILED MARCH 15, 1904.

In the Court of Appeals of the District of Columbia, January Term,
1904.

WATSON F. CLARK, Administrator,	} No. 1384.
<i>vs.</i>	
MUTUAL RESERVE LIFE INSURANCE COMPANY.	

Stipulation.

It is hereby stipulated and agreed by and between counsel for the appellant and the appellee, respectively, that the following shall be considered and taken as a part of Exhibit "C" to the defendant's first and second pleas in this case, and shall form a part of the record in this case for the consideration of this court.

Endorsement on policy.

Table of Rates.

Admission fee.

\$1000.. \$8.00 \$2000.. \$12.00 \$3000.. \$15.00 \$5000.. \$20.00 \$10000.. \$30.00

Dues.

The dues are limited to \$2.00 on each \$1,000, payable annually in advance.

Assessment rate table.

No assessments will be made while there remains in the death fund a sum sufficient to pay a claim in full.

When an assessment is required, each survivor shall pay for each \$1,000 of the amount of his certificate as follows :

Age.	Rate.	Age.	Rate.	Age.	Rate.	Age.	Rate.	Age.	Rate.
15 to 25	\$1.00	34	\$1.20	42	\$1.52	50	\$1.84	58	\$2.60
26.....	1.02	35	1.24	43	1.56	51	1.88	59	2.80
27.....	1.04	36	1.28	44	1.60	52	1.92	60	3.00
28.....	1.06	37	1.32	45	1.64	53	1.96	61	3.25
29.....	1.08	38	1.36	46	1.68	54	2.00	62	3.50
30.....	1.10	39	1.40	47	1.72	55	2.10	63	3.75
31.....	1.12	40	1.44	48	1.76	56	2.25	64	4.00
32.....	1.14	41	1.48	49	1.80	57	2.40	65	4.25
33.....	1.16								

This association is not required by law to maintain the reserve which is required of ordinary life insurance companies.

Extracts from the Constitution and By-Laws of the Mutual Reserve Fund Life Association, Passed February 9, 1882.

SEC. 3. At every annual election of directors each member of this association in good standing, shall be entitled to one vote in person, or by proxy, provided that no vote by proxy or power of attorney shall be accepted unless registered with the secretary of the association at least thirty days before the election at which it is offered.

SEC. 4. The corporate powers of the association shall be vested in the board of directors, who shall have power to adopt such by-laws as they deem necessary, not inconsistent with this constitution, and to amend the same. And to fix the amount and rate of assessments, fees, and dues; and to enact rules and regulations for the government of officers and employees, and for the management of the affairs of the association.

ARTICLE IX.—*Fees, Dues, and Assessments.*

SEC. 1. The amount of the fees and dues, and the conditions in regard to the payment of the same and in regard to the payment of assessments, shall be stated in the certificate issued to each member of the association.

ARTICLE X.—*Benefits to Members.*

SEC. 1. Upon the decease of any member, the association shall within ninety days after receiving satisfactory notice and proof of the same, pay to the beneficiary named on the books of the association, or to his or her assigns or next of kin, as the case may be, the amount to which the same are entitled, according to the terms of the certificate of membership held.

ARTICLE XII.—*Amendments.*

SEC. 1. This constitution may be revised or amended at any annual meeting of the association, or at a special meeting of the members called for that purpose, by a two-thirds vote of the members present or by proxy, but no such amendments shall be considered unless the same shall have been submitted in writing to the executive committee at least thirty days previous to such annual or special meeting, except by unanimous consent of the members present at such meeting.

Table following sec. 9 of by-laws (see p. 18):

Age.	Rate.
15 to 25.....	\$1.00
26.....	1.02
27.....	1.04
28.....	1.06
29.....	1.08
30.....	1.10
31.....	1.12
32.....	1.14
33.....	1.16
34.....	1.20
35.....	1.24
36.....	1.28
37.....	1.32
38.....	1.36
39.....	1.40
40.....	1.44
41.....	1.48
42.....	1.52
43.....	1.56

Age.	Rate.
44.....	1.60
45.....	1.64
46.....	1.68
47.....	1.72
48.....	1.76
49.....	1.80
50.....	1.84
51.....	1.88
52.....	1.92
53.....	1.96
54.....	2.00
55.....	2.10
56.....	2.25
57.....	2.40
58.....	2.60
59.....	2.80
60.....	3.00
61.....	3.25
62.....	3.50
63.....	3.75
64.....	4.00
65.....	4.25

12. If at any time any person secures membership in this association by concealing any material fact, or if the statements in his application for membership are in any respect untrue; or if any member shall neglect to pay any dues or assessments for more than *than* thirty days after notice sent that the same have become due; or if any of the conditions are violated upon which the certificate of membership is expressly issued; then and in every such case such membership shall at once cease and determine, and all payments made thereon shall be forfeited to the association.

But the executive committee shall have power to reinstate such delinquent member at any time within one year, for good cause shown and upon satisfactory evidence of good health and upon payment of all delinquent dues and assessments.

These by-laws may be amended at any quarterly meeting of the board of directors.

CHARLES L. FRAILEY,
Attorney for Appellant.
 J. H. RALSTON,
 F. L. SIDDONS,
Attorneys for Appellee.

[Endorsed:] No. 1384. Watson F. Clark, administrator, appellant, vs. Mutual Reserve Life Insurance Company. Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 15, 1904. Henry W. Hodges, clerk.

